

October 19, 1944

Arizona Game and Fish Commission
Mr. Fred Merkle, State Game Warden
Phoenix, Arizona

LAW LIBRARY

ARIZONA ATTORNEY GENERAL

Gentlemen:

We have your letter of September 28, 1944, by Mr. Ralph Morrow, chief deputy, in which you ask for opinion on the following:

"We would like to have your opinion as to whether or not the State Game and Fish Commission has legal jurisdiction in controlling predatory animals on the Grand Canyon National Park area.

It is a known fact that predators have increased in such numbers that they are taking a great toll of game animals each year as well as livestock, and recently the coyotes in that area have been stricken by an epidemic of rabies."

The Act of Congress creating the Grand Canyon National Park does not assume to exclude the jurisdiction of the State from the control of predatory animals in the area, and we do not believe that there is any intention, either expressed or implied, in either the Federal or State law to prevent your department or any other State agency from enforcing the provisions of Section 57-133, Arizona Code, 1939, and other related laws, which provide for the taking of predatory animals at any time.

Section 57-140, Arizona Code 1939, provides for the killing or capture of any species of animals or birds which are seriously injurious to agricultural or other interests in any particular community.

Within the territory of fish and game sanctuaries in national forests, established by proclamation of the President under Title 16, Sections 694, 694-a, 694-b, Federal Code, it is provided by the Congress that the Secretaries of Agriculture and Commerce shall make rules and regulations for the administration of such fish and game sanctuaries, but such regulations must not be in contravention of State laws for hunting capturing or killing predatory animals, such as wolves, coyotes, foxes, pumas and other species destructive to livestock or wild life or agriculture within the limits of such fish and game sanctuaries. In the same last named section the Congress specifically provided that the jurisdiction of the State shall not be altered or changed without the approval of the Legislature of the State.

There is no approval by the Legislature of Arizona surrendering the power of the State to the Federal government, and no attempt by the Congress of the United States to assume exclusive

44-100a

Arizona Game and Fish Commission
Mr. Fred Merkle, State Game Warden

10-19-44

jurisdiction for taking or killing of predatory animals (whether afflicted with rabies or not,) within the borders of the State of Arizona upon any of the lands belonging to the United States.

We are of the opinion:

The police power of this State extends throughout the limits of this State and over all lands within this State for the killing or taking of predatory animals by your department. Such wild predatory animals are the property of the State and not of the Federal government.

In the case of *Lacoste vs. Department of Conservation of La.*, 68 L. Ed. 437, the Supreme Court of the United States held:

"The wild animals within its borders are, so far as capable of ownership, owned by the State in its sovereign capacity for the common benefit of all of its people. Because of such ownership, and in the exercise of its police power, the State may regulate and control the taking, subsequent use, and property rights that may be acquired therein."

Title 16, Section 480, Federal Code Annotated, relating to National Forests, provides:

"****The State wherein any such national forest is situated shall not, by reason of the establishment thereof, lose its jurisdiction.* * * * *"

We know of no legal reason why agencies and officers of the United States would or should fail to cooperate with your department in the premises.

Respectfully,

JOE CONWAY, Attorney General

EARL ANDERSON
Chief Assistant
Attorney General

THOMAS J. CROAFF
Assistant Attorney General

44-100a